

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

UNITED STATES OF AMERICA and the
STATE OF ILLINOIS,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS,
THE URBANA CHAMPAIGN SANITARY
DISTRICT, and
CEDA, INC.,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America (“the United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the United States Department of the Interior, and the State of Illinois (the “State”), by and through the Attorney General of Illinois, on behalf of the People of the State of Illinois, and at the request of the Illinois Department of Natural Resources (“IDNR”) and the Illinois Environmental Protection Agency (“IEPA”), file this complaint and allege as follows:

STATEMENT OF THE CASE

1. This civil action asserts claims for natural resource damages for a major fish kill incident that occurred in July 2002, pursuant to Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f) (“CWA Section 311(f)”). The Defendants are the Board of Trustees of the University of Illinois (the “University”), the Urbana Champaign Sanitary District (the “Sanitary District”), and CEDA, Inc. (“CEDA”).

2. The University hired CEDA, an industrial cleaning contractor, to perform boiler cleaning operations at the University’s Abbott Power Plant in 2002, and CEDA performed that work during July 2002. Rather than having the wastewater generated by that cleaning operation collected and trucked offsite for treatment and disposal, the University arranged for the untreated wastewater to be discharged directly to the Sanitary District’s Northeast Sewage Treatment Plant on July 11, 2002. Due to the high concentration of ammonia and the high pH of that untreated wastewater, the wastewater did not receive adequate treatment at the Sanitary District’s treatment plant, and the partially-treated wastewater was discharged to the Saline Branch Drainage Ditch and entered the Salt Fork of the Vermillion River on July 11, 2002.

3. The July 11, 2002 discharge incident (the “Discharge Incident”) caused damage and destruction of natural resources – including killing a large number of fish and invertebrates – in approximately 9.9 miles of the Saline Branch Drainage Ditch and in approximately 32.4 miles of the Salt Fork of the Vermillion River during July 2002. The United States and the State (collectively the “Plaintiffs”) have incurred and will incur costs and expenses in responding to the Discharge Incident and in restoring or replacing the natural resources that were damaged or destroyed by the Discharge Incident. Pursuant to CWA Section 311(f), this action by the

Plaintiffs seeks to recover costs of restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action, and the parties hereto, pursuant to CWA Section 311(n), 33 U.S.C. § 1321(n), and 28 U.S.C. §§ 1331 and 1345.

5. Venue is proper in this district pursuant to CWA Section 311(n), 42 U.S.C. § 1321(n), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the Discharge Incident occurred in this district.

GENERAL ALLEGATIONS

6. Pursuant to CWA Section 311(f), 33 U.S.C. § 1321(f), the owner or operator of an onshore facility from which a hazardous substance has been discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), is liable for costs of removal of the hazardous substance under CWA Section 311(b)(4), 33 U.S.C. § 1321(b)(4), including any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge of the hazardous substance. Under CWA Section 311(f)(5), 33 U.S.C. § 1321(f)(5), the United States, or the authorized representative of any State, is empowered to act on behalf of the public as trustee of the natural resources to recover for costs of replacing or restoring such resources, and any sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources.

7. The Discharge Incident constituted the “discharge” of “harmful quantities” of “hazardous substances . . . into or upon the navigable waters of the United States” in violation of

CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3). Ammonia has been designated as a “hazardous substance” pursuant to CWA Section 311, and the Plaintiffs are informed and believe that the Discharge Incident involved the unpermitted discharge of “harmful quantities” of that hazardous substance pursuant to CWA Section 311(b)(3) and 40 C.F.R. § 117.3.

8. At times relevant to this action, each of the Defendants was an “owner or operator of an onshore facility” from which ammonia – a “hazardous substance” – was discharged in violation of CWA Section 311(b)(3), within the meaning of CWA Section 311(f).

9. The University is an “owner or operator” of the Abbott Power Plant in Champaign, Illinois,” and the Discharge Incident involved the discharge of a hazardous substance from that “onshore facility” in violation of CWA Section 311(b)(3).

10. At times relevant to this action, CEDA acted as an “operator” of pertinent portions of the Abbott Power Plant – under a contractual arrangement with the University – and the Discharge Incident involved the discharge of a hazardous substance from that “onshore facility” in violation of CWA Section 311(b)(3).

11. The Sanitary District is the owner and operator of its Northeast Sewage Treatment Plant in Urbana, Illinois, and the Discharge Incident involved the discharge of a hazardous substance from that “onshore facility” in violation of CWA Section 311(b)(3).

12. Natural resources have been damaged or destroyed as a result of the Discharge Incident, and the United States and the State have incurred and will incur costs or expenses in the restoration or replacement of those injured natural resources, within the meaning of CWA Section 311(f)(4), 33 U.S.C. § 1321(f)(4). The Defendants are jointly and severally liable to the United States and the State for such costs or expenses pursuant to CWA Sections 311(f)(4)-

(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5).

FIRST CLAIM FOR RELIEF

(United States' Claim for Costs and Expenses for Restoration or Replacement of
Injured Natural Resources Under CWA Section 311(f)(4)-(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5)))

13. Paragraphs 1-12 are realleged and incorporated herein by reference.

14. Pursuant to CWA Sections 311(f)(4)-(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5), the Defendants are jointly and severally liable to the United States for all past and future costs or expenses incurred by the United States in the restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident, including natural resource damage assessment costs and costs of implementing natural resource restoration activities.

SECOND CLAIM FOR RELIEF

(State of Illinois' Claim for Costs and Expenses for Restoration or Replacement of
Injured Natural Resources Under CWA Section 311(f)(4)-(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5)))

15. Paragraphs 1-14 are realleged and incorporated herein by reference.

16. Pursuant to CWA Section 311(f)(4)-(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5), the Defendants are jointly and severally liable to the State for all past and future costs or expenses incurred by the State in the restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident, including natural resource damage assessment costs and costs of implementing natural resource restoration activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Illinois, respectfully request that this Court:

1. Enter judgment in favor of the United States and against the above-named

Defendants, jointly and severally, for all costs or expenses incurred by the United States in the restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident, including natural resource damage assessment costs and costs of implementing natural resource restoration activities;

2. Enter judgment in favor of the State and against the above-named Defendants, jointly and severally, for all costs or expenses incurred by the State in the restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident, including natural resource damage assessment costs and costs of implementing natural resource restoration activities;

3. Enter a declaratory judgment in favor of the United States and the State and against the above-named Defendants, pursuant to 28 U.S.C. § 2201, that the Defendants are jointly and severally liable for any future costs or expenses incurred by the United States or the State in the restoration or replacement of natural resources damaged or destroyed as a result of the Discharge Incident, including natural resource damage assessment costs and costs of implementing natural resource restoration activities;

4. Award the United States and the State their costs of this action; and

5. Grant such other and further relief as the Court deems just and proper.

FOR THE UNITED STATES OF AMERICA

Date: _____

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Date: _____

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Dated: October 10, 2007

THOMAS DAVIS, Chief
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Dated: October 10, 2007

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CERTIFICATE OF SERVICE

Pursuant to Paragraphs 22 and 32 of the Consent Decree lodged with the Court on this date, I hereby certify that copies of the foregoing Complaint were served on this date by first-class mail, postage prepaid, upon the following individuals:

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